TEH AH KUAY v. PUBLIC PROSECUTOR.

[A. Cr. J. (Wilson, J.) December 5, 1952]

[K.L. — Selangor Criminal Appeal No. 55 of 1952 and 511]

Penal Code, ss. 420 and 511 Charge of cheating — Evidence of attempting to cheat.

The appellant was charged with and convicted of an offence of cheating contrary to section 420 of the Penal Code. The facts were as follows: On January 28th about 10 persons were playing a game of cards in the back portion of a coffee-shop. A police Lieutenant in the Criminal Intelligence Representative at Klang came and raided the shop. Some days later a Chinese, who stated he was a police Inspector, went to the shop and questioned one Lim Thong Chong, the coffee-shop keeper, about the gambling. Thong Chong was very worried and someone suggested to him he should see the appellant, which he did. He told the appellant his worries and 3 or 4 days later the appellant, according to the evidence, said he wanted $400 to settle the person who raided the shop. Thong Chong then reported the matter to an A.S.P. in the anti-corruption branch. As a result, $400 in ten-dollar notes were marked and, according to Thong Chong, they were handed to the appellant. This evidence was corroborated by one Leow Her Hia. Subsequently, the appellant was arrested and searched and two marked ten-dollar notes were found in his possession.

Held: the evidence did not support the conviction but the appellant could and should have been convicted of the offence of attempting to cheat.

Case referred to:—

(1) *Light* 11 Cr. App. R. 111.

CRIMINAL APPEAL.

K. K. Benjamin for the appellant.

P. G. Clough (D.P.P.) for the Public Prosecutor.

Cur. Adv. Vult.

Wilson, J.: — Lim Thong Chong is a coffee-shop keeper in partnership with five others. On the 28th January about ten persons were playing a game of cards in the back portion of the coffee-shop. A Police Lieutenant in the Criminal Intelligence Representative at Klang came and raided the shop. Some days later a Chinese, who stated he was a police inspector, went to the shop and questioned Thong Chong about the gambling. Thong Chong was very worried and someone suggested to him he should see the appellant, which he did. He told the appellant his worries and three or four days later the appellant, according to the evidence, said he wanted $400 to settle the person who raided the shop. Lim Thong Chong then reported the matter to an Assistant Superintendent of Poilce in the anti-corruption branch. As a result, $400 in ten-dollar notes were marked and, according to Lim Thong Chong, they were handed to the appellant. This evidence was corroborated by Leow Her Hia. Subsequently, the appellant was arrested and searched and two of the marked ten-dollars notes were found in his possession.

The Deputy Public Prosecutor admitted that on that evidence the accused should not have been convicted of cheating under section 420 of the Penal Code but maintained that he could and should have been convicted of attempting to cheat.

Mr. Benjamin for the appellant stated that the case upon which the Deputy Public Prosecutor relied was an English case, that the Penal Code in this country was based on the Indian Penal Code and that the English case had no application here. However, I find in the Law of Crimes, *Ratanlal and Dhirajlal Thakore*, 17th edition at page 1045 the following sentence:—

"Where a person knows that the statements made by another are false, but still acts upon them with a view to entrap that person, it will not amount to cheating but will amount to attempt to cheat."

One of the authorities quoted to support this statement is the case of *Light*[1], upon which Mr. Clough relied. In my opinion there was ample evidence in this case to support the charge of attempting to cheat and whilst the conviction under section 420 of the Penal Code must be quashed, there will be substituted for it a conviction under section 511 of the Penal Code of attempting to commit an offence contrary to section 420 of the Penal Code. I see no reason to reduce the sentence imposed of six months' rigorous imprisonment and the same will stand.

Conviction substituted.
Sentence confirmed.

NAWAB DIN v. MOHAMED SHARIFF & ORS.
and
MOHAMED SHARIFF & ORS. v. NAWAB DIN.

[O. C. J. (Thomson, J.) November 4, 1952]

[Ipoh — Civil Suit Nos. 106 & 138 of 1951]

Agreement for sale with option to re-purchase at same price — Purchaser to have profits of land — Whether agreement was agreement for sale or a mortgage.

These two suits were heard together and the claim of the plaintiff in the second suit was treated as a counterclaim to the first suit. The defendants in the first suit had obtained judgment against another party from the Japanese Court for possession of a piece of land with 3 houses subject to payment of $6,250 and interest. The plaintiff agreed to lend a sum of $7,000 to the defendants to enable the latter to satisfy the judgment debt. On December 13th, 1944 they executed an agreement and the defendants executed a Power of Attorney in favour of the plaintiff. By the agreement the defendants agreed to sell to the plaintiff one of the 3 houses and the land on which it stands in consideration of the sum of $7,000, the former remaining the registered proprietors of the land. The important terms of the agreement were that the plaintiff was to remain in possession of the house free from interference for 3 years during which period the defendants were prohibited from selling, or creating any charge on it. After the 3 years, and within 2 months after that, the defendants were to have the right to repurchase for the same price of $7,000. If the